LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 19 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71 - 551

ARNOLD GOLDSTEIN,

Petitioner,

vs.

FLORIDA STATE BOARD OF DENTISTRY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RONALD S. COPE
1 N. La Salle Street
Chicago, Illinois 60602
Attorney for Petitioner

GUTSTEIN & COPE
1 N. La Salle Street
Chicago, Illinois 60602
Of Counsel

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 3-3988

INDEX

PAGE

OPINION BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 6

I. The requirement that a dentist licensed and in good standing in Illinois be required to take and pass another examination given by the State of Florida before being permitted to practice in that State violates his Constitutional right to travel from State to State 6

II. The requirement that a dentist duly licensed by the State of Illinois be required to take and pass an examination before being licensed in Florida arbitrarily and unreasonably denies the plaintiff a license to practice dentistry in that State 11

III. The Complaint alleges a basis for Federal jurisdiction by raising Constitutional issues of national importance 15

CONCLUSION 20

APPENDICES 21-25

Citations

Cases

Bell v. Hood, 327 U.S. 678, 681, 682 (1946) 15, 18

Keeran v. Board of Law Examiners of State of North Carolina, 317 F. Supp. 1359, 1361, 1362 (1970) 10

Passenger Cases, 7 How. 283, 492 (1849) 8

Powell v. McCormack, 395 U.S. 486, 514 (1969) 19

Schware v. Board of Examiners, 353 U.S. 232, 238 (1956) 10, 14

Shapiro v. Thompson, 394 U.S. 618, 634 (1968) 9

Smith v. Texas, 233 U.S. 630, 636 (1913) 10, 11

Truax v. Raich, 239 U.S. 33, 39 (1915) 10

Statutes and Other Authorities.

28 U.S.C. § 1331 (a) 5

28 U.S.C. § 1343 (3) 5

Ill. Rev. Stat., 1969, Ch. 91, § 58b 13

Florida Statutes, Ch. 466, § 466.17(1) 14

Wright, Federal Courts, Section 19, p. 59 (West Publishing, 1963) 15

"National Board," Publication American Dental Association, p. 3 (1971) 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

ARNOLD GOLDSTEIN,

Petitioner,

vs.

FLORIDA STATE BOARD OF DENTISTRY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, Arnold Goldstein, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered July 23, 1971.

OPINION BELOW.

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto.

JURISDICTION.

The judgment of the Court of Appeals for the Fifth Circuit was entered July 23, 1971. The court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED.

1. Whether the requirement that a dentist licensed and in good standing in Illinois be required to take and pass another examination given by the State of Florida before being permitted to practice in that state violates his constitutional right to travel from one state to another.

2. Whether the requirement that a dentist duly licensed by the State of Illinois be required to take and pass an examination before being licensed to practice in Florida is reasonably related to the protection of the public health, safety or welfare of the people of Florida.

3. Whether the complaint raises substantial constitutional issues so as to require the district court to take jurisdiction.

STATUTORY PROVISION INVOLVED.

Florida Statutes, Ch. 466, Section 466.14 which is set forth in full in the Appendix.

STATEMENT OF THE CASE.

This is an action brought by Dr. Arnold Goldstein, a dentist, against the Florida State Board of Dentistry, alleging violations of the plaintiff's rights under Article I, Section 8 and Article IV, Section 2 and the 14th Amendment of the Constitution of the United States. Petitioner prayed that a three-judge court be convened, that sections of the Florida statute regulating the practice of dentistry be declared invalid, that the respondent be enjoined from denying the petitioner the right to practice dentistry in Florida, and that the respondent be directed to issue to the petitioner a certificate permitting him to practice dentistry in Florida. The respondent filed an Answer and a motion to Strike and Dismiss the Complaint. The trial court entered an order dismissing the Complaint for want of federal jurisdiction.

Petitioner, Arnold Goldstein, is a Doctor of Dental Surgery licensed to practice in the State of Illinois (R. 1). He is a graduate of the University of Illinois College of Dentistry. He received his DDS degree from that school on June 12, 1959 (R. 1). Petitioner has taken and passed the examination given by the Council of National Board of Dental Examiners of the American Dental Association and completed all requirements for National Board Certification (R. 1). Petitioner is a member of the American Dental Association, Illinois State Dental Association, Chicago Dental Society, and American Dental Society of Anesthesiology (R. 2). He is in good standing with and authorized to practice dentistry by the Depart-

ment of Registration and Education of the State of Illinois, the administrative agency which regulates the practice of dentistry in Illinois.

Dr. Goldstein engaged in the practice of dentistry in Illinois from September 1959 to March 1960 (R. 1, 2). The practice of dentistry in Florida is not distinguishable from the practice of dentistry in Illinois (R. 2). On March 24, 1969 the plaintiff established his residence in Florida (App. 2). On February 12, 1970 petitioner applied to the Florida State Board of Dentistry, the agency responsible for regulating admission into the practice of dentistry in Florida, for a license and annual renewal certificate. He submitted the statutory fees and agreed to provide proof of his professional and moral competence (R. 2). The Board denied his application for the sole ground that he chose not to take the examination authorized by Section 466.14 of Chapter 466 of the Florida Statutes (R. 2).

The Florida Statutes authorize the defendant to conduct examinations and to require satisfactory completion of its examination before issuing a license to practice dentistry in Florida (R. 3). Once having obtained a license a Florida practitioner may have this license renewed annually without being retested or making any other showing of competence, by applying for a renewal and paying the statutory fee (R. 3). The petitioner alleged in his complaint that the Florida requirements for admission to practice are without a rational basis, without compelling state interest, without relation to the general welfare and without consideration of the quality of practice in Florida (R. 4). He further alleged that he is being denied the right to practice while others of like

skills are not and that this constitutes an arbitrary classification causing him to suffer disabilities different from others similarly situated, a discrimination which deprives petitioner of life, liberty and property without due process of law and the equal protection of the laws as guaranteed by Section 1 of the 14th Amendment of the Constitution of the United States (R. 4).

Petitioner also alleged that the arbitrary exercise by the Board of its discretion denied him the right to earn a living as a dentist, and that the arbitrary classification imposed upon him was a restriction on his ability to move from Illinois to Florida in violation of his right to travel freely from State to State as guaranteed by Article I, Section 8 and Article IV, Section 2 of the Constitution of the United States. Jurisdiction was predicated upon 28 U.S.C.A. Section 1331(a) and 1343(3).

The lower court granted the respondent's motion to strike and dismiss the Complaint. The order states in part, as follows (R. 86):

> "The complaint herein does not allege a deprivation of equal protection, due process, or any other federally guaranteed right. No substantial federal question is presented. Nor is there any other basis for federal jurisdiction. Accordingly, it is
>
> Ordered and Adjudged that defendant's motion to dismiss be and the same is hereby granted. Plaintiff's complaint is dismissed."

The United States Court of Appeals for the Fifth Circuit affirmed the District Court.

REASONS FOR GRANTING THE WRIT.

I.

THE REQUIREMENT THAT A DENTIST LICENSED AND IN GOOD STANDING IN ILLINOIS BE REQUIRED TO TAKE AND PASS ANOTHER EXAMINATION GIVEN BY THE STATE OF FLORIDA BEFORE BEING PERMITTED TO PRACTICE IN THAT STATE VIOLATES HIS CONSTITUTIONAL RIGHT TO TRAVEL FROM STATE TO STATE.

The issues being raised here are of national importance because they strike at an archaic system which is being employed to discourage interstate travel by all dentists who wish to settle in another state. Licensing statutes, which in the 19th century and the early part of this century, served the proper purpose of protecting the public from the unscrupulous and the unskilled, no longer serve that function in regard to dentists who have already been licensed by a sister state. Instead their function is to insure the economic well-being of an entrenched group who fear the influx of out of state practitioners.

The experienced practitioner, removed from the academic scene, after years of practical experience is faced with having to once again prepare for an examination if he is interested in resettling in another state and wishes to continue in his profession. It is doubtful whether any professional in any field of endeavor could pass an examination designed to measure his general knowledge without considerable preparation. For example, many practicing lawyers or judges who are years removed from the law school, are not prepared to pass a Bar examina-

tion dealing with a variety of topics such as the Uniform Commercial Code, criminal law, evidence, federal taxation, administrative law, real estate, wills and estates, future interests, torts, etc. It takes time and it takes preparation to review these subjects and to become reacquainted with the nuances of the subject matter necessary to pass an examination.

For the dentist, torts and commercial law are replaced by such subjects as "pathology, radiology, bacteriology, anatomy, physiology, histology, chemistry, embryology, oral medicine, periodontics, orthodontics," etc. Florida Statutes, CH466, Sec. 466.14, (1). These are subjects with which the young graduating dentist is readily familiar. He is and should be required to demonstrate his knowledge to receive his license. Ten years ago Arnold Goldstein did precisely that. He took and passed the National Board examination prepared by the National Board of Dental Examiners and he took and passed the examinations required by the State of Illinois. The examinations which he passed and the proficiency which he demonstrated were equivalent to any test imposed by the State of Florida upon a young dentist being licensed at that time in the State of Florida. The standards for both Illinois and Florida were the same. Florida does not require the dentist which it admitted to practice ten years ago to once again take an examination, and there is no good reason why it should require that Goldstein once again take an examination before he can practice in that State. Goldstein was, and still is, prepared to prove by the testimony of leading dental authorities from various parts of the country that the standards for admission in Florida and the quality of practice in

Florida is in no way superior to the requirements for admission to practice in Illinois or the standards of practice in Illinois.

The real reason why Florida, or rather the dental profession in Florida, since it is the practicing dentists in Florida who largely determine what requirements should be imposed for admission, insist on a licensee from Illinois or New York or Massachusetts or California, or any other state with standards equal to or surpassing those of dentists in Florida, having to once again take an examination designed to measure the knowledge of a graduating dental student, is to discourage experienced practitioners from other states from settling in Florida. Certainly neither the Florida resident nor the citizen of any other state would imagine that a dentist from Chicago is less qualified to practice dentistry than a dentist from Miami. It is doubtful whether any dental authority could be found who would testify that the qualifications of a dentist licensed in Illinois are less than those of a dentist licensed in Florida. Yet this is exactly the presumption that must be made in order to preserve the requirement that an Illinois dentist must submit to an examination before being allowed to practice in Florida. In reality, the only function the Florida requirement serves is to protect the economic tranquility of the Florida dentist from the threat of outside invasion.

This purpose is not acceptable under our Constitution. In the *Passenger Cases,* 7 How. 283, 492 (1849), Chief Justice Taney stated:

> "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the

> United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

This court in *Shapiro* v. *Thompson*, 394 U.S. 618 (1968), recognized the fundamental importance of the right to travel unrestricted between the states of the Union, in holding unconstitutional a one-year residency requirement for welfare recipients. In that case the states tried to justify the requirement by reference to four superficially laudatory state objectives: (1) planning of the welfare budget; (2) the objective testing of residency; (3) minimizing the fraudulent receipt of payments in more than one jurisdiction; and (4) encouraging early entry of new residents into the labor force. In rejecting this requirement this Court said (394 U.S. at p. 634):

> At the outset, we reject appellants' argument that a mere showing of a rational relationship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification. See *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 78 (1911); *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961). The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional. Cf. *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Bates* v. *Little Rock*, 361 U.S. 516, 524 (1960); *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963).

The regulation by the State of Florida has neither a rational relationship to a permissible objective nor does it promote a *compelling* governmental interest, yet it serves as a deterrent to the free exercise of the right to travel from state to state. It is certainly a permissible objective to promote the health, safety and welfare of the citizenry of a state; yet it is irrational to conclude that dentists from Chicago are lacking in any skills possessed by dentists from Miami. In turn, there is certainly nothing to suggest that the protection of the economic well being of its dentists is a compelling governmental interest of a state. To the contrary, as stated in *Smith* v. *Texas*, 233 U.S. 630, 638 (1914):

> "None of the cases sustain the proposition that, under the power to secure the public safety, a privileged class can be created and be then given a monopoly of the right to work in a special or favored position."

Using these criteria the Florida statute violates the fundamental right to travel from state to state.

Furthermore, there can be no doubt that this right to travel includes the right to settle and practice one's profession. *Truax* v. *Raich*, 239 U.S. 33, 39 (1915); *Smith* v. *Texas*, 233 U.S. 630 (1914). As was well stated by Judge Cravin in *Keenan* v. *Board of Law Examiners of State of North Carolina*, 317 F. Supp. 1350 (1970) at pp. 1361-1362:

> "The right to travel and the right not to be arbitrarily excluded from the legal profession, as pronounced in *Schware*, are here entwined. The right to work for a living in one's chosen occupation is for most people a prerequisite to the pursuit of happiness. If a man may be arbitrarily made to give up

> his lifetime endeavor—even for a year—in order to move his residence, it is idle to talk to him about 14th Amendment protection of personal freedom."

In the case at bar, in order to obtain admission to the State of Florida, it is necessary that the petitioner give up his practice, establish his residence in Florida and prepare for an examination. It is a great personal sacrifice which cannot help but deter persons like the petitioner from settling in that state. He is being required to do this for no rational reason. He is being denied the exercise of his right to travel freely between the states and to settle in another state by a statute which lost its proper reason to exist many years ago, and whose real reason for existence is certainly not one of compelling dimension.

II.

THE REQUIREMENT THAT A DENTIST DULY LICENSED BY THE STATE OF ILLINOIS BE REQUIRED TO TAKE AND PASS AN EXAMINATION BEFORE BEING LICENSED IN FLORIDA ARBITRARILY AND UNREASONABLY DENIES THE PLAINTIFF A LICENSE TO PRACTICE DENTISTRY IN THAT STATE.

There are certain freedoms which are fundamental to our society and among them is the right of the individual to pursue his lawful trade or profession so as to earn a livelihood. In *Smith* v. *Texas,* 233 U.S. 630, (1913), this Court said (p. 636):

> "Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. Insofar as a man is deprived of the right to labor his liberty

> is restricted, his capacity to earn wages and acquire property is lessened and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

The petitioner is a dentist licensed to practice by the State of Illinois (R. 1). He practiced dentistry in Illinois for ten years before moving to Florida (R. 1, 2). He is a graduate of the University of Illinois College of Dentistry, D.D.S. 1959, a member of the American Dental Association, the Illinois State Dental Association, the Chicago Dental Society and the American Dental Society of Anesthesiology (R. 2).

The petitioner took and passed the "National Board Dental Examinations" given by the Council of National Board of Dental Examiners (R. 1, "National Board," Publication American Dental Association p. 3 (1971)). The Council was established in 1928 and is a standing committee of the American Dental Association. It is composed of nine members elected by the House of Delegates of the American Dental Association. The Council includes three members each from the American Association of Dental Examiners, the American Association of Dental Schools, and the American Dental Association ("National Board," Publication American Dental Association, p. 3 (1971)). At present fifty of fifty-three United States licensing jurisdictions accept the National Board Examination in lieu of a local written examination in the basic and clinical sciences. Florida, Delaware and Puerto-Rico do not accept this examination. "National Board," Publi-

cation American Dental Association, p. 4 (1971). Illinois recognizes a certificate granted by the National Board of Dental Examiners, Ill. Rev. Stat., 1969, Ch. 91 Section 58b, and the quality of the practice of dentistry and the skills of Illinois dentists are equal to the standards found in Florida or any other state (R. 2).

In the case at bar, the petitioner is being denied the right to travel to Florida, establish his residence there and practice his profession. The State of Florida refuses to issue him a license to practice dentistry, although he is as qualified to practice dentistry as dentists who have been issued licenses and who are practicing in Florida. The reason given for refusing to issue the license is the failure of the plaintiff to take the Florida examination (R. 2).

As pointed out by the Court in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238 (1956):

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment. (Citations omitted). A state can require high standards of qualification such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

In the present case there is no rational connection between the examination requirement and the plaintiff's qualifications to practice dentistry in Florida. Florida dentists are in no way superior to dentists practicing in Illinois. The qualifications of the plaintiff are equal to any of dentists already practicing in Florida. The Na-

tional Board Examination, given by so eminent and highly qualified a group as the Council of National Board of Dental Examiners meets any standard necessary to protect the health, safety or welfare of the people of Florida. Dr. Goldstein was prepared to introduce evidence in the trial court that the procedures he followed to become licensed in Illinois meet any reasonable standard required to protect the health, safety and welfare of the people of Florida.

Any limitation must bear a *reasonable* relationship to the public, health, safety or welfare. The requirement that the plaintiff once again pass an examination is not reasonable. This is especially true when the Court notes that a Florida dentist is not required to be retested when he seeks a renewal of his license but may simply obtain such a certificate upon payment of the statutory fee. Florida Statutes, 466.17(1). Even a licensee who gives up his Florida residence may apply for an annual renewal of his license. Florida Statutes, 466.17(1). The examination is, therefore, not related to ascertaining whether a dentist has maintained his skill or knowledge at a certain minimal level.

Finally, examinations relating to the licensing of lawyers may be distinguished from the licensing of dentists. This distinction is important since the defendant relied heavily on cases relating to lawyers in its argument in the lower court (R. 41, 42). While local law may vary from state to state and while it is reasonable to require a lawyer to demonstrate his knowledge of the law in the jurisdiction in which he wishes to practice, there is nothing to suggest that the teeth of the people of Florida are significantly different from the teeth of the people of Illinois.

The requirement that the petitioner submit to an examination in Florida when he has already qualified by taking and passing the National Board Examination and by having been admitted to practice in Illinois, where the standard of practice is equal to that in Florida, bears no reasonable relationship to the public health, safety and welfare. The application of the statute to plaintiff violates his rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment.

III.

THE COMPLAINT ALLEGES A BASIS FOR FEDERAL JURISDICTION BY RAISING CONSTITUTIONAL ISSUES OF NATIONAL IMPORTANCE.

The general rule in determining whether federal jurisdiction exists may be stated as follows (Wright, Federal Courts, Section 19, p. 55 (West Publishing Co., 1963)):

> "A corollary rule is that federal jurisdiction exists if the complaint states a case arising under federal law, even though on the merits the party may have no federal right. If his claim is bad, then judgment is to be given against him on the merits, and even if the court is persuaded that federal law does not give the right the party claims it is to dismiss for failure to state a claim on which relief can be granted rather than for want of jurisdiction. Dismissal for want of jurisdiction is appropriate only where the federal claim is frivolous or a mere matter of form."

In *Bell* v. *Hood,* 327 U.S. 678 (1946), this Court considered an action for damages against agents of the Federal Bureau of Investigation for false imprisonment of the plaintiff in violation of rights of due process and freedom from unreasonable searches and seizures as guaranteed under the Fourth and Fifth Amendments of

the United States Constitution. The District Court dismissed the Complaint for want of federal jurisdiction on the ground that the cause of action did not arise under the Constitution or laws of the United States. In reversing the lower court, this Court said (327 U.S. p. 681):

> "Before deciding that there is no jurisdiction, the district court must look to see the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent the party who brings a suit is master to decide what law he will rely upon and . . . does determine whether he will bring a 'suit arising under' the . . . [Constitution or laws] of the United States by his declaration or bill."

In response to the defendants' argument in that case that the complaint might not state a cause of action allowing recovery, the Court said (327 U.S. p. 682):

> "Jurisdiction, therefore, is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction."

The district court dismissed the Complaint in the case at bar for want of federal jurisdiction. The order of dismissal recites (R. 86):

> "The complaint herein does not allege a deprivation of equal protection, due process, or any other federally guaranteed right. No substantial federal question is presented. Nor is there any other basis for federal jurisdiction."

This recital in the order is incorrect as the most cursory examination of the Complaint reveals. The Complaint begins by alleging the basis for jurisdiction, as follows (R. 1):

> "This action arises under Article I, Section 8, Article IV, Section 2, and Section 1 of the 14th Amendment to the Constitution of the United States, and the matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000)."

The Complaint then goes on to allege that plaintiff is a dentist, licensed in the State of Illinois who desires to practice in Florida. That the practice of dentistry in Florida is not distinguishable from the practice of dentistry in Illinois and that the plaintiff has the same skills now as he had when he practiced in Illinois (R. 2). The plaintiff applied for licensing but was refused by the defendant for the reason that he elected not to submit to the examination authorized by the Florida Statute (R. 2).

The Complaint states that the plaintiff (R. 4),

> ". . . for reasons without rational basis, without compelling state interest, without relation to the general welfare, and without consideration to the quality of the practice of dentistry to Florida, is

being denied the right and privilege of earning a living as a dentist while others of his profession of like skill, standing and qualification are not; and that this arbitrary classification of plaintiff which causes him to suffer disabilities different from others of his profession similarly situated is insidious discrimination which deprives the Plaintiff of life, liberty and property, *without due process of law* and the *equal protection of the laws as guaranteed him by Section 1 of the 14th Amendment to the Constitution of the United States.*" (Emphasis added)

The Complaint further alleged (R. 4):

". . . [T]his arbitrary classification of Plaintiff which causes him to suffer disabilities different from others of his profession similarly situated is a severe impediment, barrier and restriction on the ability and the desire of the plaintiff to travel or move from Illinois to Florida, which is in violation of his *right to travel freely from state to state as guaranteed by Article 1, Section 8, Article IV, Section 2, and the 14th Amendment, Section 1 of the Constitution of the United States.*" (Emphasis added)

Contrary to the order entered by the lower court the Complaint does allege violations of due process and equal protection as guaranteed by the Constitution as well as violations of other constitutionally guaranteed rights.

As stated in *Bell* v. *Hood*, 327 U.S. at p. 681:

"Before deciding that there is no jurisdiction, the district court must look to see the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States."

This review does not go to the merits of the case or even to the issue of whether the complaint states a cause

of action. The issues are decided after and not before the court has assumed jurisdiction. In the present case it is clear that the plaintiff is seeking relief under the Constitution of the United States and the trial court erred in dismissing the Complaint for failure to allege violations of "federally guaranteed" rights.

This Court in *Schware* v. *Board of Examiners*, 353 U.S. 232 (1956) said (p. 238):

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

The plaintiff argued that the application of the Florida statute to him was discriminatory, unreasonable and an effort by the state to exclude him from practicing his profession in that state. If he can prove his allegations and if his theory of law is correct then he is entitled to a judgment in his favor. In *Powell* v. *McCormack*, 395 U.S. 486 (1969), this Court said (p. 514):

> "It has long been held that a suit 'arises under' the Constitution if a petitioner's claim will be sustained if the Constitution [is] given one construction and will be defeated if [it is] given another."

The plaintiff is entitled to a judgment in his favor if the State of Florida is applying its licensing statute to him in an arbitrary and unreasonable manner. He had the right, therefore, to invoke the jurisdiction of a federal court to determine the merits of his case.

CONCLUSION.

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

RONALD S. COPE
1 N. La Salle Street
Chicago, Illinois 60602
Attorney for Petitioner

GUTSTEIN & COPE
1 N. La Salle Street
Chicago, Illinois 60602
Of Counsel

APPENDIX A

In The
UNITED STATES COURT OF APPEALS
For The Fifth Circuit

No. 71-1314
Summary Calendar*

ARNOLD GOLDSTEIN,
Plaintiff-Appellant,

versus

FLORIDA STATE BOARD OF DENTISTRY
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

(July 23, 1971)

Before GEWIN, GOLDBERG and DYER, Circuit Judges.

PER CURIAM: Judgment AFFIRMED. See Local Rule 21.[1]

*Rule 18, 5th Cir. See *Isbell Enterprises, Inc.* v. *Citizens Casualty Co. of New York, et al.*, 431 F. 2d 409, Part I, (5th Cir. 1970).

[1]See *NLRB* v. *Amalgamated Clothing Workers of America*, 430 F. 2d 966 (5th Cir. 1970).

APPENDIX B

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1970

No. 71-1314
Summary Calendar

D. C. Docket No. 70-666-Civ-CF

ARNOLD GOLDSTEIN,
Plaintiff-Appellant,

versus

FLORIDA STATE BOARD OF DENTISTRY
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida
Before GEWIN, GOLDBERG and DYER, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that plaintiff-appellant pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

July 23, 1971

Issued As Mandate Aug. 16, 1971

APPENDIX C

UNITED STATES DISTRICT COURT
Southern District Of Florida

ARNOLD GOLDSTEIN,
Plaintiff.
vs.
FLORIDA STATE BOARD OF DENTISTRY,
Defendant.

No. 70-666-Civ-CF

ORDER

THIS CAUSE came before the Court on defendant's motions to dismiss and to strike and plaintiff's objections to interrogatories.

The complaint herein does not allege a deprivation of equal protection, due process, or any other federally guaranteed right. No substantial federal question is presented. Nor is there any other basis for federal jurisdiction. Accordingly, it is

ORDERED and ADJUDGED that defendant's motion to dismiss be and the same is hereby granted. Plaintiff's complaint is dismissed.

DONE and ORDERED at Miami, Florida, this 2 day of October, 1970.

/s/ Charles B. Fulton
Chief Judge

cc: Robinson & Randle
Tew & Tew

APPENDIX D

STATUTE INVOLVED

Florida Statutes, Ch. 466, Sec. 466.14

466.14 *Examinations; license certificates.*—

(1) When the board finds that the application and accompanying proof submitted by any person pursuant to §466.13, is satisfactory, it shall notify the applicant to appear before it for an examination at a time and place to be fixed by it. The examination shall be oral, visual, written, theoretical, practical, clinical, professional evaluation and of such a character as to thoroughly test the qualifications of the applicant to practice dentistry and may be taken from but not limited to the following subjects: Pathology, radiology, bacteriology, treatment planning, clinical dentistry, operative dentistry, prosthetics, crown and bridge technique, orthodontics, materials in dentistry, diet and nutrition, oral hygiene and prophylaxis, preventive medicine, periodontics, anesthesia, oral surgery, oral medicine, principles of medicine, materia medica and pharmacology, anatomy, physiology, histology, chemistry, embryology, dental history, this chapter and such subdivisions of these general subjects as relate to the practice of dentistry.

(2) All examination papers shall be filed with the secretary-treasurer of the board and kept for reference and inspection for a period of not less than two years. Examination papers while so retained shall be open to inspection only to board members and the executive director, the applicant himself, or by some person properly appointed by such applicant to examine same or pursuant to an order of a court of competent jurisdiction in a proceeding where the question of the contents

(Statute Involved)

of any such paper or papers is involved. The said board shall make a record of the examination grade of each applicant which shall be preserved for the two-year period as part of his examination paper.

(3) Should the applicant make a passing grade on his examination, he shall be granted a license by the board, and a license certificate signed by a majority of the board, including the chairman and the secretary-treasurer, bearing the seal of the said board, shall be issued, which certificate, when duly recorded as provided in this chapter, shall be evidence of his or her privilege to practice dentistry in this state; provided such licensee complies with the further provisions of §466.15.

History.—§10, ch. 14708, 1931; CCL 1936 Supp. 3534 (10); §14, ch. 26240, 1941; §8, ch. 61-471; §6, ch. 67-409.